DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, HONOLULU
FORT SHAFTER, HAWAII 96858-5440

REPLY TO ATTENTION OF:

February 6, 2009

Regulatory Branch
Engineering and Construction Division

Corps File No.: POH-2007-127

Mr. Ted Matley
Federal Transit Administration, Region IX
201 Mission Street, Suite 1650
San Francisco, CA 94105

Mr. Wayne Y. Yoshioka
Department of Transportation Services
City and County of Honolulu
650 South King Street, 3rd Floor
Honolulu, HI 96813

Dear Mr. Matley and Mr. Yoshioka:

This letter transmits our comments on the **Honolulu High-Capacity Transit Corridor Project** (Project) **Draft Environmental Impact Statement** (DEIS), dated November 2008. The document was jointly prepared by the U.S. Department of Transportation, Federal Transit Administration (FTA) and the City and County of Honolulu, Department of Transportation Services (DTS) to evaluate the environmental consequences of the proposed 23-mile rapid transit project located between Kapolei and University of Hawaii Mānoa on the Island of Oahu, Hawaii. Our comments are provided pursuant to the U.S. Army Corps of Engineers (Corps) regulatory authorities promulgated under Section 404 of the Clean Water Act (CWA) of 1972 and Section 10 of the Rivers and Harbors Act (RHA) of 1899. Our feedback is also guided by the Project's *Draft Coordination Plan* that was developed for this project pursuant to Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFTEA-LU) and our independent statutory responsibilities under the National Environmental Policy Act (NEPA) of 1969.

As a way of background, our role as an official cooperating agency is to ensure appropriate consideration of the aquatic ecosystem throughout the environmental review process. In doing so, we expect the Final EIS to be substantively sufficient for purposes of our agency's adoption in accordance with the Council on Environmental Quality's (CEQ) NEPA implementing regulations. Furthermore, our early involvement in the Project is intended to assist FTA and DTS in complying with all applicable federal laws that fall under our regulatory jurisdiction. Towards this end, my office has submitted comments on the Project in letters dated February 13, 2006[1]; April 10, 2007[2]; May 8, 2007[3] and September 16, 2008[4]. Our most recent review of the

[1] Letter from George P. Young, U.S. Army Corps of Engineers to Kenneth Hamayasu, DTS, regarding scoping and EIS Preparation Notice

public DEIS encompassed all pertinent documents provided to our agency, including, but not limited to:

- DEIS, Chapters 1 through 8 (FTA and DTS, November 2008);
- Appendix A of the DEIS: Conceptual Alignment Plans and Profiles (DTS, September 2008);
- Appendix C of the DEIS: Construction Approach (DTS, November 2008);
- Water Resources Technical Report (DTS, August 2008);
- Alternatives Analysis Report (DTS, November 2006); and
- Draft Coordination Plan (FTA and DTS, March 2007)

Based on our review, we found that a number of our agency's previous comments and concerns relating to the identification/delineation of waters of the United States, project impact assessment, the 404(b)(1) alternatives analysis, and proposed compensatory mitigation were not adequately addressed or incorporated into the DEIS. In the absence of this key information, we are unable to provide meaningful comments on the subject draft NEPA document as it relates to our statutory responsibilities. Moreover, these data and assessment deficiencies could adversely affect the timeliness and streamlining of our Department of the Army (DA) permit decision. Therefore, as a cooperating agency, we suggest the following comments be vetted and resolved, as appropriate, by the Federal lead and cooperating agencies prior to the next formal step in the NEPA process.

Aquatic Resources Data Gaps

According to the President's CEQ, an EIS must rigorously explore and objectively evaluate a reasonable range of alternatives, including the proposed action. One of the cornerstones of the NEPA process is the disclosure of the environmental consequences of the proposed action and its alternatives. An analytical evaluation of project impacts is necessary in order for a reviewer to sharply compare and contrast alternatives. While there is no mandate for a particular outcome or that the lead agency achieves particular substantive environmental results, a rigorous evaluation of alternatives is required to inform decision-makers of the likely environmental consequences, both detrimental and beneficial, of the alternatives. The preface of the Project's DEIS acknowledges the purpose of the document is to "...provide...[a] full and open analysis of costs, benefits, and environmental impacts of alternatives considered...", yet based on our review of the document, we do not concur that some of these basic NEPA tenets have been adequately fulfilled.

Irrespective of the NEPA precept of a concise environmental document, at the project-specific DEIS stage we require greater specificity and disclosure of quantitative data regarding the aquatic environment. We note neither the Water Resources Technical Report (WRTR) nor Chapter 4 of the DEIS (*Environmental Analysis, Consequences and Mitigation*) contains

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[2] Letter from George P. Young, U.S. Army Corps of Engineers to Kenneth Hamayasu, DTS, regarding NEPA scoping comments in response to FTA's NOI

[3] Letter from LTC Charles H. Klinge, U.S. Army Corps of Engineers to Leslie T. Rogers, FTA, regarding cooperating agency status and SAFETEA-LU coordination plan

[4] Letter from George P. Young, U.S. Army Corps of Engineers to Wayne Yoshioka, DTS, regarding comments on

information on: 1) the geographic boundaries of waters of the U.S., including wetlands; 2) quantitative data documenting the areal extent of direct and indirect impacts for each of the proposed build alternatives (e.g., footprint of disturbance); and 3) specific documentation of how the Project will avoid and minimize impacts to aquatic resources to the maximum extent practicable. In previous correspondence, the Corps requested the DEIS include these standard analytical and procedural requirements in order to document our geographic scope of jurisdiction and to characterize the functional losses to the aquatic ecosystem, if any, as a result of project implementation. Both aspects are fundamental to our regulatory program and DA permit decisions.

Notwithstanding the aforementioned data omissions, we offer the following specific comments on the presence/absence of aquatic resources, the analysis of impacts on the aquatic environment and proposed mitigation.

- Table 4-1 in the WRTR identifies 18 streams/waterways that occur within the study area, whereas Table 4-25 in the DEIS depicts 17 streams; the Ala Wai Canal is excluded in the latter. A third matrix, entitled "Streams in the Study Corridor" was distributed for discussion purposes during our December 2008 agency coordination meeting. This table lists 20 streams occurring in the study area that could be affected by the Project. The Corps recommends any discrepancies with the various tables be reconciled and a clear, comprehensive accounting of the existing aquatic resources within the study area be presented.

- Page 4-130 of the DEIS indicates "...wetland areas are listed in Table 4-28..." However, the aquatic resources called out in Table 4-28 do not appear to be classified or delineated based on the Corps' 1987 Wetlands Delineation Manual (manual) and other current Corps policy. For example, nine of these water resources listed in Table 4-28 are described as concrete channels or concrete culverts, which generally are not known to support hydric soils (unless they maintain a natural channel invert), and therefore would not be considered wetlands. The Corps suggests this table be reviewed and modified, as appropriate, to categorize or otherwise identify water resources that constitute a "wetland" based on the Corps methodology.

- We noted inconsistencies with respect to the conclusions made in the DEIS regarding environmental consequences. For instance, page 4-135 of the DEIS states that mitigation is not required because no impacts to wetlands are expected, although page 4-159, Section 4.17.7 (*Natural Resources*), indicates "...[C]onstruction activities could affect wildlife, vegetation, wetlands and streams near the Project." [Emphasis added]. The Corps recommends clarification on the conclusions of the water resources impact analysis. We also suggest a reference or citation be provided in the DEIS that directs the reader to the actual field data and detailed analysis that substantiate the findings.

- While Section 4.13.3 of the DEIS (page 4-131) asserts: "...the project would not adversely affect water resources...", page S-1 of the WRTR states: "Piers to support the guideway may have to be located in some streams." Similar statements on page 6-1 of the WRTR and page 4-132 of the DEIS indicate: "[A]ny piers in streams would be

placed to line up with existing bridge structures when feasible...[a]reas where elevated structures would cross navigable waterways have been identified and consultation with the Coast Guard in underway to address effects" We infer from these statements that there would be direct impacts to [potential] waters of the U.S., likely requiring review and authorization under Section 404 of the CWA and/or Section 10 of the RHA. The Corps suggests this section of the DEIS be clarified.

- Subsequent to the release of the DEIS, the Corps was informed that there may be construction methodologies that could result in direct impacts to waters of the U.S., such as the use of coffer dams (pers. comm., Amy Zaref et al., December 16, 2008). Therefore, we recommend the Final EIS identify all project features and construction methodologies that may affect waters of the U.S. FTA and DTS should provide an explicit accounting of what waterways and wetlands will be impacted, including an estimate of the footprint of disturbance (e.g., acres) and the type of impact (e.g., direct, indirect, permanent, temporary, and so forth). In order to accomplish this, a formal JD must be undertaken by a qualified consultant and verified by the Corps. Information contained in the JD, in conjunction with detailed engineering plans, should then be used to substantiate the presence/absence of jurisdictional waters of the U.S. and whether impacts would result from implementation of the proposed build alternatives.

- Section 4.13.1 of the DEIS (*Regulatory Context*) indicates the Corps regulates activities in jurisdictional waters pursuant to Section 10 of the RHA and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, however, omits the fact we also regulate activities that involve the discharge of dredged or fill material in jurisdictional waters of the U.S. under Section 404 of the CWA. Although a separate subheading entitled "*Wetlands*" (page 4-128) correctly explains the Corps regulates wetlands under Section 404 of the CWA, it does not explicitly acknowledge that we regulate activities that discharge fill material into other types of waters of the U.S., such as non-wetland tributaries. Therefore, the text of the DEIS should be modified to clarify the scope of our jurisdiction under Section 404 of the CWA. Unless FTA and DTS intend to transport dredged or fill material for ocean disposal, the Corps does not anticipate our authorities under Section 103 of the MPRA will be relevant to this Project.

- Page 4-134 of the DEIS indicates verbatim: "...[A] letter has been sent to the Army Corps of Engineers asking for their jurisdictional determination concurring that the Project will not have a direct impact on wetlands." We are concerned with the accuracy of this statement, as the Corps has not received a letter from the Project proponent or its designated agent requesting our jurisdictional determination (JD). Further, we have not received a draft JD report prepared in accordance with the 1987 Wetlands Delineation Manual, 33 C.F.R. § 328.3(d) and 33 C.F.R. § 328(e) to review and approve. For this reason, we request this statement be stricken from the DEIS or substantially modified to accurately portray the status of coordination with our office on the Project's JD.

Based on recent coordination with your consultant team, we understand the aforementioned data gaps are under development and that site-specific information will be forthcoming. It is not clear, however, how this yet-to-be obtained information will be incorporated into the DEIS and

considered by the public and agency decision-makers prior to the final determination of a federally preferred alternative. Again, due to the absence of a geographic JD, we are unable to determine the extent, intensity and permanence of impacts to the aquatic ecosystem. At this time, we are also precluded from weighing in on the adequacy of a 404(b)(1) alternatives analysis, appropriate mitigation, and the possible identification of the least environmentally damaging practicable alternative (LEDPA).

Alternatives Analysis

The purpose of the Project is to: "...[p]rovide high capacity rapid transit in the highly congested east-west transportation corridor, between Kapolei in the west and University of Hawaii, Mānoa in the east, as specified in the *Oahu Regional Transportation Plan 2030*" (page 1-19). A number of alternatives were initially examined, but rejected as part of the Alternative Analysis process conducted by DTS in 2006. The Alternative Analysis Report evaluated four alternatives, including the No Build, Transportation System Management, Express Buses Operating in Managed Lanes, and Fixed Guideway Transit System. The latter was selected by the City Council as the locally preferred alternative. According to the DEIS, the NEPA scoping process confirmed that there were no other available alternatives that would satisfy the project purpose at less cost, with greater effectiveness or less environmental or community impact.

The 404(b)(1) Guidelines[5] impose substantive requirements on the applicant with respect to the alternatives analysis and the sequenced search for the LEDPA. These guidelines are heavily weighted towards preventing environmental degradation of waters of the U.S. The regulation specifically requires that no discharge of dredged or fill material shall be permitted if there is a practicable[6] alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences [40 C.F.R. § 230.10(a)]. Section 4.13.1 of the DEIS (*Background and Methodology*) appropriately acknowledges the applicant must conduct a 404(b)(1) alternatives analysis, however, we were unable to locate this analysis within the DEIS, its appendices or technical studies. Presuming this analysis has not yet been prepared, there is no reference in the DEIS as to when it might be performed.

Generally, if the NEPA alternatives analysis is adequately robust with respect to the aquatic ecosystem impacts such that it demonstrates that the proposed activity is the LEDPA, then it can duly serve to fulfill the 404(b)(1) alternatives analysis requirement. Otherwise, a separate alternatives analysis must be conducted to provide greater specificity and/or a modified range of alternatives in order to satisfy the substantive criteria of the Guidelines (i.e., the identification of the LEDPA). It is germane to note that if it is otherwise a practicable alternative, an area not presently owned by the applicant which could be reasonably obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed project may be considered under the Guidelines. NEPA has similar language in which it requires that even if an alternative is not

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the administrative draft EIS

[5] U.S. Environmental Protection Agency, 404(b)(1) Guidelines, 40 C.F.R. § 230 (45 FR 85336 – 85357, dated December 24, 1980)

[6] "Practicable" is defined in regulation as being available and capable of being done after taking into consideration cost, existing technology and logistics in light of the overall project purpose.

within the lead agency's jurisdiction it should be rigorously analyzed in the EIS if it is reasonable and achieves the project purpose [40 C.F.R. 1506.2(d)]. Despite some alternatives being outside the control or legal jurisdiction of the lead agency, their inclusion in the EIS helps to provide a sharper contrast among alternatives and informs the public as well as decision-makers of the environmental consequences (beneficial or detrimental) of alternative actions.

For the Honolulu High-Capacity Transit Corridor project, the range of alternatives includes the No Action alternative plus one build alternative with two alignment variations. The alignments considered in the DEIS are: 1) the Honolulu International Airport variation, 2) the Salt Lake Boulevard variation, and 3) implementation of both the Airport and Salt Lake Boulevard variations. Aside from the area between Aloha Stadium and Kalihi where the alignment varies, the alternatives traverse the same footprint for the majority of the19-mile length. In fact, the DEIS states: "...the guideway would follow the same alignment for all Build Alternatives through most of the study corridor, except between Aloha Stadium and Kalihi." (pages S-4, 2-9). In consideration of the requirements of the 404(b)(1) Guidelines, the Corps recommends FTA and DTS carefully examine and clearly document the environmental differences between the build alternatives/alignments and provide documentation that there is no other practicable alternative—other than the locally preferred alternative—that would have less adverse impact on the aquatic ecosystem.

Cumulative Effects

According to the DEIS, the proposed transportation corridor is approximately 23 miles in length, of which a detailed environmental evaluation was conducted for a core 19 miles located between East Kapolei and Ala Moana Center. Future transit extensions to West Kapolei and UH Mānoa and Waikiki may occur, but are only considered in the DEIS in the context of cumulative effects. We agree this is an appropriate approach for potential future Project extensions that currently have not been approved, designed or funded. The NEPA requires that the lead agency take a hard look at alternatives and the resultant environmental consequences to enable informed agency decisions. Environmental consequences may be beneficial or adverse, but in all cases, the direct, indirect and cumulative impacts must be assessed and disclosed within the NEPA document. We found the Project's cumulative impact analysis for waters of the U.S. to lack sufficient analytical detail and robustness for purposes of public disclosure and agency decision-making. A meaningful cumulative impact assessment includes an evaluation of the historic and current conditions of the environmental resource of interest, a thorough accounting of past, present and reasonably foreseeable future projects and how such projects affect a given environmental resource when assessed in the aggregate.

The cumulative impacts to waters of the U.S. must be considered in the context of the pre-established geographic boundaries for the wetlands/waters cumulative effects analysis. The impacts that would result from the Project's build alternatives must be evaluated in comparison to the quantity and quality of aquatic resources occurring within the geographic study area and in consideration of other stressors or impacts resulting from past, present and reasonably foreseeable projects. That is, it may be that the resulting impacts from the Honolulu High-Capacity Transit Corridor project alternatives are, individually, deemed minimal when compared to the overall Project footprint of disturbance, but when the project impacts are compared to the

already diminished extent and health of wetlands existing within the study area, such impacts could be considerably more substantial. The discussion of the water resources cumulative effects offered in Section 4.18.3 (page 4-174) is inadequate to enable a fair and objective evaluation of cumulative impacts. Therefore, the Corps recommends the text be expanded to better address the suggestions outlined above.

Compensatory Mitigation

For projects evaluated under Section 404 of the CWA, no discharge of dredged or fill material into waters of the U.S. can be approved that does not meet the requirements of the 404(b)(1) Guidelines. Guidance for implementing the 404(b)(1) Guidelines is provided through the joint Corps-EPA 1990 Mitigation Memorandum of Agreement (MOA) and the new Compensatory Mitigation Rule[7], which supersedes certain provisions of the 1990 MOA. Among other things, the MOA states that compensatory mitigation may not be used as a method to reduce environmental impacts in the evaluation of the alternatives for the purposes of requirements under 40 C.F.R. Section 230.10(a).

The Corps anticipates providing feedback on the draft 404(b)(1) alternatives analysis as the environmental process moves forward. In general, however, the following sequence of determinations will be used in evaluating the Project:

- A determination that potential impacts have been avoided to the maximum extent practicable;
- A determination that remaining unavoidable impacts will be mitigated to the extent appropriate and practicable by requiring measures to minimize impacts through project modifications and permit conditions; and
- A determination that appropriate and practicable compensatory mitigation has been provided for unavoidable adverse impacts.

The DEIS should document an explicit and transparent link between project impacts and proposed mitigation. Under the new Compensatory Mitigation Rule, greater flexibility exists for permittee-responsible mitigation through on-site and off-site mitigation. The same holds true for out-of-kind mitigation. In general, however, implementation of compensatory mitigation should occur on-site unless it is demonstrated there is no practicable opportunity for on-site mitigation or if off-site mitigation provides greater ecological benefits. Compensatory mitigation should also occur within the same watershed of impact whenever possible. If compensatory mitigation is recommended to occur outside the watershed of impact, a sound ecological rationale must be presented as to why it is the most practicable choice.

In our previous comment letters, we cautioned DTS about deferring specific mitigation planning to the permitting stage of this project. In our view, it is important that discussions with

[7] Final Rule, Compensatory Mitigation for Losses of Aquatic Resources (Corps and EPA, April 10, 2008; 73 FR 19594 - 19705).

key regulatory and resource agencies related to compensatory mitigation begin at this phase of the NEPA process and continue throughout the permit process. Also, it is noteworthy to point out that the new Compensatory Mitigation Rule requires our Public Notice (PN) for the preferred alternative contain a statement explaining how impacts associated with the proposed action are to be avoided, minimized and compensated for and that a final mitigation plan be approved by our district engineer prior to issuance of an individual permit. Therefore, it is important that at the time of issuance of our PN the mitigation proposal is specific enough for the public to offer meaningful comments on its appropriateness and effectiveness.

Should your augmented impact analysis for aquatic resources determine there are unavoidable adverse impacts to waters of the U.S., we expect a draft compensatory mitigation plan to be prepared in accordance with Honolulu District's Mitigation and Monitoring Guidelines and the Final Compensatory Mitigation Rule. At a minimum, this plan should include the following: 1) a direct correlation between project impacts and proposed mitigation to offset the loss in functional value; 2) the specific functions and values expected to be gained through the proposed establishment, restoration, enhancement and preservation efforts; 3) a schedule for implementation; and 4) an evaluation and monitoring plan.

In addition, it may be prudent to consider implementation of certain components of the compensatory mitigation plan in advance of the impacts occurring, which may then reduce the temporal losses associated with project construction.

NEPA Procedural Requirements

As a cooperating agency with both special expertise and jurisdiction by law, we intend to adopt FTA's Final EIS for compliance with the Corps' independent NEPA responsibilities for our federal action (i.e., DA permit decision). In doing so, we will be required to issue a Notice of Intent in the Federal Register and prepare our own Record of Decision (ROD). The Corps' ROD will constitute our agency's decision document and will be relied upon for the final DA permit decision. As part of agency decision-making, the Corps will need written evidence from FTA that compliance with Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act has been achieved. Similarly, prior to a DA permit decision, the Corps must have evidence that the Project has obtained Section 401 of the CWA certification (or waiver thereof) and Section 307(c) of the Coastal Zone Management Act consistency (or exemption).

Public Interest Review

Lastly, our project evaluation process requires we balance the project purpose against the public interest. The public benefits and detriments of all factors relevant to this transportation project will be carefully reviewed and considered. Relevant factors may include, but are not limited to, conservation, economics, aesthetics, wetlands, cultural values, fish and wildlife values, water quality, and any other factors judged important to the needs and welfare of the people. The following general criteria will be considered in evaluating the Honolulu High-Capacity Transit Corridor project application:

- The relevant extent of public and private needs
- Where unresolved conflicts of resource use exist, the practicability of using reasonable alternative locations and methods to accomplish project purposes; and
- The extent and permanence of the beneficial and/or detrimental effects the proposed project may have on public and private uses to which the area is suited.

No DA permit can be granted if the project is found to be contrary to the public interest. We anticipate working with FTA, DTS, other key agencies and interested parties in the documentation of our public interest review.

We appreciate the opportunity to comment on the Project's DEIS. Our goal is to ensure the environmental review process is appropriately comprehensive, technically sound and transparent to enable meaningful public participation and informed agency decision-making. We look forward to continuing our dialogue with your respective offices as well as your consultant team. If you have any questions or concerns, please contact Ms. Susan A. Meyer of my staff at (808) 438-2137or by electronic mail at susan.a.meyer@usace.army.mil. Please refer to the Corps File No. POH-2007-127 in any future correspondence or communications related to this project.

Sincerely,

for George P. Young, P.E.
Chief, Regulatory Branch

Copies Furnished:

Mr. Alec Wong, Chief, Clean Water Branch, State Dept of Health
Mr. John Nakagawa, Office of Planning, State Coastal Zone Management Program
Mr. Michael Molina, U.S. Fish and Wildlife Service, Honolulu
Dr. Lance Smith, Protected Resources Division, NOAA Fisheries
Mr. Gerry Davis, Habitat Conservation Division, NOAA Fisheries
Dr. Wendy Wiltse, U.S. Environmental Protection Agency, Honolulu

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June 11, 2010

RT2/09-299501R

Mr. George P. Young, Chief
Regulatory Branch
Department of the Army
U.S. Army Engineer District
Fort Shafter, Hawaii 96858-5440

Dear Mr. Young:

Subject: Honolulu High-Capacity Transit Corridor Project
Comments Received on the Draft Environmental Impact Statement

The U.S. Department of Transportation Federal Transit Administration (FTA) and the City and County of Honolulu Department of Transportation Services (DTS) issued a Draft Environmental Impact Statement (EIS) for the Honolulu High-Capacity Transit Corridor Project. This letter is in response to substantive comments received on the Draft EIS during the comment period, which concluded on February 6, 2009. The Final EIS identifies the Airport Alternative as the Project and is the focus of this document. The selection of the Airport Alternative as the Preferred Alternative was made by the City to comply with the National Environmental Policy Act (NEPA) regulations that state that the Final EIS shall identify the Preferred Alternative (23 CFR § 771.125 (a)(1)). This selection was based on consideration of the benefits of each alternative studied in the Draft EIS, public and agency comments on the Draft EIS, and City Council action under Resolution 08-261 identifying the Airport Alternative as the Project to be the focus of the Final EIS. The selection is described in Chapter 2 of the Final EIS. The Final EIS also includes additional information and analyses, as well as minor revisions to the Project that were made to address comments received from agencies and the public on the Draft EIS. The following paragraphs address your comments regarding the above-referenced submittal:

Aquatic Resources

Coordination with Federal, State, and Local agencies with water resource expertise and responsibilities has been ongoing to provide input and guidance on the resources, design, and construction of the Project. Coordination will continue as appropriate with regulatory agencies throughout final design and construction. Since publication of the Draft EIS, several meetings have been held with the USACE December 9, 2008, January 15, February 25, May 13, July 3, and August 10, 2009. DTS appreciates the time the USACE has taken to review the Project materials required to fill the aquatic resource data gaps.

Sections 4.14 and 4.18.10 of this Final EIS have been revised to include the deficiencies and clarify the discrepancies identified by the USACE in the Draft EIS. These revisions occurred in the following water resource areas:

- *Regulatory authority of the USACE.*
- *Identification and delineation of waters of the U.S.*
- *Project impact assessment for waters of the U.S. (permanent and temporary).*
- *The 404(b)(1) alternatives analysis.*
- *Mitigation to waters of the U.S.*

USACE guidance permits the use of a preliminary jurisdictional determination (JD) approach to satisfy NEPA requirements. The "preliminary JD" approach is being followed for this Project. Under this approach, areas that are potentially waters of the U.S. are considered to be waters of the U.S. For the purposes of this document, all waters (including intermittent and ephemeral streams) are considered waters of the U.S. if they fit the definitions of tidal, wetland, RPW, or non-RPW waters, unless otherwise stated. The Wetland and Waters of the U.S. Study (RTD 2009b) provides additional information on areas being covered under preliminary JDs which is also documented in Section 4.14 of the Final EIS. The Final EIS also includes an evaluation of impacts to waters of the U.S. (See Section 4.14.4 in this Final EIS).

On September 15, 2009, the Army Corps of Engineers stated in a letter that its substantive concerns relating to Section 404 of the Clean Waters Act had been addressed and that the scope and intensity of impacts to jurisdictional waters of the United States are now relatively minor due to the extent of avoidance and minimization of impacts on the aquatic environment resulting from project site selection and design. This letter is in Appendix F of this Final EIS. There will be impacts to waters of the U.S by the Project. Transit guideway support columns will be placed in Waiawa, Moanalua, and Nuuanu Streams. In addition, the Project will be widening the existing Dillingham Boulevard Bridge at Kapalama Stream which will require extension of the existing piers and abutments. The total permanent impacts from structural elements of the Project is 0.02 acres. An existing stormwater outfall in Waiawa Springs will be extended at the Pearl Highlands Station to reduce ponding (total impact is 0.06 acres). For all work in waters of the U.S., the City will apply for USACE Section 404 nationwide permits for impacts to waters under the jurisdiction of the Corps where impacts could not be avoided.

Permanent mitigation features are proposed at Waiawa Stream, within the Pearl Highlands Station, see Figure 4-62 in the Final EIS. This approximately 17-acre site provides sufficient space for mitigation since only approximately 5 acres will be required for the station, leaving the remainder of the site available for mitigation. Regulations suggest, but do not require, mitigation within the same watershed. Impacts from the Project amount to several small impacts in different watersheds. Individually these would be difficult to mitigate separately (i.e., keep within the same watershed as the impact) to achieve lasting compensation. Impacted watersheds could be more broadly defined on the basis of the nearby receiving waterbody for the impacted estuary; these are Pearl and Honolulu Harbors and Ke'ehi Lagoon. Of the three,

Pearl Harbor has the greatest potential for benefit from a mitigation effort directed at improving function within a contributing stream system. This is because it is the largest of the estuarine environments (i.e., of a type closer to the environments impacted) and is the most enclosed. As a result, it is more sensitive to land impacts than Ke'ehi Lagoon or Honolulu Harbor. The proposal is to consolidate mitigation to a single site (Site 12) Figure 4-62 and Figure 4-67 in the Final EIS, on Waiawa Stream. Waiawa Stream was selected over an estuary location because of the availability of land that is part of the Project where enhancement of the stream and potential establishment of a riverine wetland are possible with a high degree of long-term success. The mitigation area would become part of the Project. Although the Project will have minimal effect on the stream, Figure 4-62 in the Final EIS, it will have a considerable effect on the riparian area at that location. Waiawa Springs (Site 13) Figure 4-62 and Figure 4-67 in the Final EIS, is under the jurisdiction of the USACE. The impact area of constructing a culvert to direct the stormwater outfall and spring flow away from under the Pearl Highlands Station is greater (0.06 acre) than all the permanent impacts from the guideway (0.02 acre). Mitigation in this location can also be used to improve the existing outfall, improve water quality, and enhance the natural setting of the station.

As discussed in Section 4.18, during construction of the linear transportation features of the Project, it is anticipated that there will also be a temporary effect of up to 0.13 acre of waters of the U.S.

A "functional assessment" was also performed for each location where the Project is adjacent to or crosses waters of the U.S., as identified in the Wetland and Waters of the U.S. Study (RTD 2009b). Given this level of impact to water resources within Honolulu's urban core, the intent of the functional assessment was to analyze impacts of the aquatic ecosystem to develop mitigation concepts for those waters of the U.S. where impacts could not be avoided and only after impacts were minimized to the extent feasible.

Alternatives Analysis

Additional discussion regarding the consideration of aquatic resources that is documented in previous studies is now more clearly summarized in Chapter 2, Alternatives Considered, in this Final EIS and Section 4.14.4, includes an analysis of alternatives to meet the requirements of the Clean Water Act 404(b)(1) Analysis. As noted by the USACE, the City has avoided and minimized impacts to waters of the U.S. which has resulted in relatively minor impacts to jurisdictional waters of the U.S.

Cumulative Effects

Section 4.19.3 Cumulative Effects, in this Final EIS has been refined to add detail regarding past actions as well as to elaborate upon how past actions have affected water resources and how water resources will be effected cumulatively by the aggregate of both the Project and reasonably foreseeable future projects.

NEPA Procedural Requirements

The required documentation of compliance with the Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act are in this Final EIS Sections 4.13 and 4.16. Prior to the USACE's permit decision, DTS understands the need to meet the requirements for Sections 401 and 404 of the CWA and Section 307(c) of the Coastal Zone Management Act.

Agency Coordination

The City will continue to work with the USACE to ensure that the USACE receives all of the necessary documentation to satisfy its public interest review criteria.

The FTA and DTS appreciate your interest in the Project. The Final EIS, a copy of which is included in the enclosed DVD, has been issued in conjunction with the distribution of this letter. Acceptance of the Final EIS by the Governor of the State of Hawaii and issuance of the Record of Decision under NEPA are the next anticipated actions.

Very truly yours,

WAYNE Y. YOSHIOKA
Director

Enclosure